IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11614 of 2004

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANGESH S TANDLEKER S/O LATE SAHEDEV TANDLEKER
Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance :
MR PK HANDA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MS AVANI S MEHTA for Respondent(s) : 3,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 06/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. Sahdev Tendulkar, Class IV employee, working as P/Jamadar in Railways, died on 5-2-2001 due to cardiac arrest because of lot of strain in service at the age of 58, leaving behind him his widow and only one adopted son Shri Mangesh-present petitioner. His widow Manorama was above 50. Therefore, on the death of Sahdev Tendulkar, his adopted son Mangesh-present petitioner applied on 26-3-2001 to the Divisional Railway Manager, Western Railway, Baroda, for giving him appointment on compassionate ground (Annexure J). Widow Manorama could not bore the shock of untimely death of her husband and suffered stroke of paralysis on the left side of her body. As no appointment on compassionate ground was made though period of one year expired after present petitioner-Mangesh applied, a letter dated 17-4-2002 was addressed by the union to the authority (Annexure K), for giving appointment on

compassionate ground in Group D category. Since 2001 widow Manorama is almost bed-ridden because of the stroke of paralysis. Meager amount of pension is spent for her treatment. Except the present petitioner, there is no-one else in her family to look after her. The petitioner is unemployed and both of them i.e. petitioner and his widow mother are living in a almost indigent condition. As they had no other accommodation, therefore, widow Manorama applied for retention of the quarter allotted to her husband and the authority was kind enough to grant two years' time to retain the quarter on normal rate by a letter dated 18-6-01 (Annexure M). However, on completion of the period of two years, they had to vacate the quarter and at present residing in a hutment area as stated at the bar by Mr. Handa for the petitioner. The authority had not considered the case of the petitioner for appointment on compassionate ground. Therefore, at first instance, the petitioner

had approached Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short " the Tribunal") by way of O.A. 322 of 2002 which was disposed of by the learned Tribunal on 2-6-2002 with a direction to the authority to consider the case of the applicant-petitioner for appointment on compassionate ground sympathetically in light of the rules and regulations and the guidelines issued by the authorities on the subject from time to time and pass appropriate orders regarding the same within a period of four months from the date of receipt of copy of the order. It was also made clear that if the decision was adverse, then it would be open to the applicant-petitioner to challenge the same before the Tribunal by way of fresh O.A.

2. In view of the aforesaid order and direction issued by the learned Tribunal in O.A. No.322 of 2002, speaking order dated 31-10-2002 was passed by Senior DPO-BRC rejecting the claim of the petitioner for appointment on

compassionate ground as the authority was of the opinion that there was no valid adoption of the petitioner by late Shri Sahdev Tendulkar. For coming to this conclusion, the authority took into consideration both the adoption deeds produced by the petitioner. In first adoption deed dated 7-4-94 (Annexure A) the petitioner was shown aged 10 years and born on 17-7-84, whereas in subsequent deed dated 8-9-97 (Annexure B) the petitioner was shown aged 15 years and born on 27-4-82. First adoption deed (Annexure A) was executed at Bombay in the State of Maharashtra, whereas second deed was executed at Baroda in the State of Gujarat. Admittedly birth date and age of the petitioner in both the deeds were different. Therefore, the authority was of the opinion that the applicant had not come before it with clean hands regarding his correct birth date. When this fact regarding discrepancy in his birth date was brought to the notice of the petitioner by the authority, than an

explanation was tried to be offered by the petitioner before the authority that in reality subsequent deed of 1997 (Annexure B) was not the adoption deed, but it was merely a correction in the birth date before the Notary and in fact, he was already adopted in 1994. However, said explanation offered by the petitioner was not found to be plausible, and therefore, not accepted by the authority. In support of his case, the petitioner had also produced his school leaving certificate showing his birth date of 1982, but the same was not accepted by the authority on the ground that the claim of the petitioner was based on fraud. Accordingly, the authority rejected the application for appointment on compassionate ground as it was of the opinion that as per second adoption deed, the petitioner was above 15 when he was adopted by his father Sahdev Tendulkar (Annexure O).

3. As per the liberty reserved earlier by the learned Tribunal, the petitioner once again approached the Tribunal by way of O.A. No.7

of 2003 which was dismissed by the learned Tribnal by its impugned judgment and order dated 16-12-03 (Annexure P), for the reasons recorded in it, which is challenged in this petition by the petitioner. From the impugned order (Annexure O), passed by the Senior DPO-ERC, it is clear that the authority was of the view that the adoption was not legal and that there was a discrepancy in the birth date of the petitioner. From the impugned order (Annexure P), passed by the learned Tribunal, it appears that the learned Tribunal rejected the application of the petitioner on the following grounds.

(i)That as per second deed (Annexure B), the petitioner was above age of 15 years. Therefore, the adoption was not valid in view of Section 10 of the Hindu Adoption and Maintenance Act.

(ii)There was a discrepancy regarding the correct birth date of the petitioner in both the adoption deeds and that both the deeds were not registered.

(iii)The second adoption deed was executed without cancelling the previous one.

(iv)Principle of estoppel would not apply in this case against the respondents-authorities merely because some benefits of medical facilities, railway passes issued to the petitioner treating him as a son of deceased Sahdev in his life time.

4. Ms. Mehta, learned counsel for the respondents has vehemently submitted that this petition is labelled as a petition under Article 226 of the Constitution of India, but strictly speaking it is a petition under Article 227 of the Constitution of India and when the learned Tribunal after giving cogent reasons rejected the application filed by the petitioner-applicant, then this Court in its limited jurisdiction under Article 227 of the Constitution of India should not interfere with as no error either on facts or law is committed by the Tribunal while rejecting O.A. of the petitioner. She submitted that

only when this Court is satisfied that there was a jurisdictional error, then only this Court should interfere, otherwise not.

5. It is no doubt true that neither first deed nor the second deed were registered. First deed (Annexure A) was executed in the State of Maharashtra at Bombay on 7-4-94 wherein age of the petitioner was shown as 10 years and his birth date was shown as 17-7-84. This age and birth date were mentioned in the adoption deed at the instance of his real father Ramchandra Babu Deolekar, who was also working in the Railways as Class IV employee. He was having three sons and one daughter. He decided to give his last son Mangaeh-the present petitioner in adoption to late Shri Sahdev Tendulkar who had no issue. Unfortunately, first deed was misplaced. Therefore, there was need to execute another formal deed as after the petitioner was given in adoption in 1994, he was brought by his late father Sahdev at Baroda in Gujarat. In fact, school leaving certificate dated 31-5-

99, issued by Shri Krishna Hindi School, Gujarat Secondary Section, Vadodara, shows that the petitioner got admission in that school on 17-6-96 and left the school on 31-5-98. It is to be noted that in the said certificate which was produced before the learned Tribunal, name of the petitioner was shown as Deolekar Mangeshkumar Ramchandra and not as Tendulkar Mangeshkumar Sahdev because the first deed was misplaced. Under the aforesaid circumstances, another formal deed (Annexure B) was executed on 8-9-97 before the Notary in Gujarat State at Vadodara. There the correct birth date of the petitioner i.e. 27-4-82 was shown which is tallying with the School Leaving Certificate issued by Baroda School wherein the petitioner had studied from 1996 to 1998 for two years. This School Leaving Certificate though annexed with the copy of the application as Annexure A-11 was not at all taken into consideration by the Tribunal.

It may also be stated that in absence of

the first adoption deed, name of the petitioner could not be changed from Deolaker Mangeshkumar Ramchandra to Tendulkar Mangeshkumar Sahdev. Therefore, second deed was executed mentioning correct birth date of the petitioner and thereafter the change in the name was effected in the gazette of the Government of Gujarat, dated 14-12-2000 (Annexure H). Copy of this gazette was also produced before the learned Tribunal, but unfortunately the same was also not considered.

6. Under the circumstances, when the name of the petitioner was duly changed and he was treated as an adopted son of his late father Sahdev Tendulkar and the respondents themselves have considered him as a son and family member of the deceased Sahdev Tendulkar by extending medical facilities as well as railway passes to him, then, after the death of Sahdev Tendulkar, it would now not open to them to say that he was not the son of Sahdev Tendulkar or that his adoption

was not valid. Unfortunately, the learned Tribunal simply brush aside this by observing that principle of estoppel would not be applicable against the respondents only on this ground that some facilities like medical facilities and railway passes were granted to the applicant as the adoption deed was not a valid one and in violation of provisions of Hindu Adoption and Maintenance Act.

7. The aforesaid aspects were not at all taken into consideration by the authority while considering his case for appointment on compassionate ground.

8. In view of the above, when it is clear that this petition is labelled under Article 226 of the Constitution of India, this Court can exercise its limited jurisdiction under Article 227 of the Constitution of India in favour of the petitioner in such cases where there was total failure on part of the learned Tribunal not to exercise its jurisdiction in favour of the petitioner by ignoring above most material documents and

relevant facts.

9. In view of the above discussion, this petition is allowed and the impugned judgment and order dated 16-12-2003 (Annexure P), passed by the learned Tribunal, dismissing O.A. No.7 of 2003, is hereby quashed and set aside and O.A. No.7 of 2003, filed by the petitioner before the Tribunal, is accepted and the impugned order at Annexure O, passed by the authority on 31-10-2002 is also quashed and set aside.

10. The respondents are now directed to consider the case of the petitioner and by adopting human approach give appointment to the petitioner on compassionate ground on any Class IV post as early as possible and not latter than 30-11-2006. Copy of this order be given to Mr. Handa, learned counsel for the petitioner and Ms. Avni Mehta, learned counsel for the respondents for its immediate implementation. Rule is made absolute.

(B.J.SHETHNA,J.)

(M.D.SHAH,J.)

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